No. 89

IN THE

Supreme Court of the United States

October Term, 1940

FIRST NATIONAL STEAMSHIP COMPANY, SECOND NATIONAL STEAMSHIP COMPANY, THIRD NATIONAL STEAMSHIP COMPANY, ALL CORPORATIONS ORGANIZED UNDER THE LAWS OF THE STATE OF NEW JERSEY, AND H. O. SCHUNEMAN, INDIVIDUALLY AND AS SOLE STOCKHOLDER OF FIRST NATIONAL STEAMSHIP COMPANY, SECOND NATIONAL STEAMSHIP COMPANY, AND THIRD NATIONAL STEAMSHIP COMPANY, AND AS SOLE DIRECTOR AND EXECUTIVE COMMITTEE OF ONE, AND AS TRUSTEE FOR THE BENEFIT OF SUCH CORPORATIONS, AND AS AGENT THEREFOR,

Petitioner,

vs.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, FORMERLY THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

STANLEY SUTTON,
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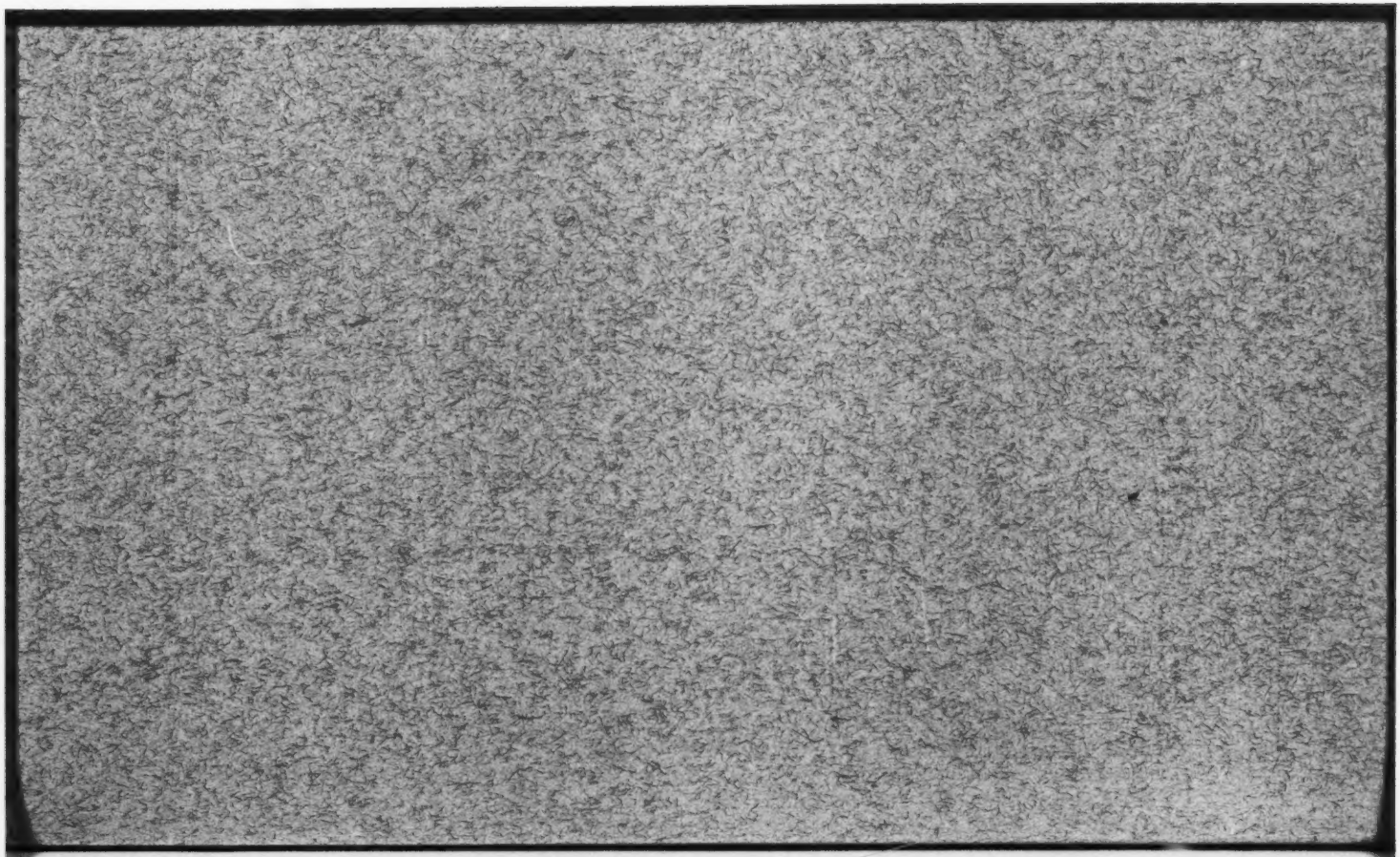
Of Counsel.



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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The undersigned, on behalf of the First National

Steamship Company, et als, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered on February 17, 1941. (R. 28).

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 22-27) is not yet reported.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

The decision of the court below involves a title and right specifically set up and claimed by the petitioner under the Constitution and laws of the United States within Section 240 of the Judicial Code as amended.

QUESTION PRESENTED

The single question presented is whether Section 203(a) of the Merchant Marine Act of June 29, 1936,[1] had the effect of completely dissolving the United States Shipping Board Merchant Fleet Corporation so that after the effective date of that Act that corporation could not be sued.

STATEMENT

The petitioners brought suit in the District Court of the United States for the District of Columbia against

[1] 49 Stat. 1985, 1987; 46 USC 1113. See Appendix A.

the United States Shipping Board Merchant Fleet Corporation and others. Upon motion of the defendants in the District Court the action was dismissed as against all of the defendants except the United States Shipping Board Merchant Fleet Corporation upon the ground that the Court lacked jurisdiction thereof. Subsequently, the Fleet Corporation filed a Motion to Dismiss, which motion was overruled and the lower court allowed a special appeal from such ruling of the District Court.

Your petitioners sued in the District Court to recover certain sums of money which had been deposited by them with the Fleet Corporation, for interest thereon, and for compensatory and punitive damages for the unwarranted retention by the Fleet Corporation of their monies.

The Court of Appeals for the District of Columbia reversed the decision of the District Court upon the ground that the Merchant Marine Act of 1936 (supra) "not only dissolved the Fleet Corporation and was an express withdrawal of consent by the United States that suit might be thereafter brought against that dissolved corporation, but also furnished an exclusive forum, the Court of Claims, in which suits growing out of the transactions of the dissolved corporation should thereafter be brought, and in which the United States, in assuming full responsibility, agreed to abide the outcome of the litigation."

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the District of Columbia erred:

(1) In reversing the District Court and in dismissing the Complaint filed by your petitioners therein.

(2) In holding and in deciding that the Merchant Marine Act of 1936 was effective as an express withdrawal of consent by the United States that suit might thereafter be brought against the Fleet Corporation.

(3) In holding and in deciding that the Merchant Marine Act of 1936 had the effect of furnishing an exclusive forum, i.e., the Court of Claims of the United States, in which suits growing out of the transactions of the dissolved corporation should thereafter be brought.

(4) In holding and in deciding that the Merchant Marine Act of 1936 deprived the United States District Court for the District of Columbia of jurisdiction in the premises.

(5) In holding and in deciding that the Merchant Marine Act of 1936 had the effect of repealing the Code of Laws of the District of Columbia in respect of the manner of the liquidation and dissolution of private corporations organized and existing under and by virtue thereof.

(6) In holding and deciding that the Merchant Marine Act of 1936 had the effect of enlarging the jurisdiction of the Court of Claims of the United States so as to make the United States suable in that Court, in this instance for interest upon monies deposited by your petitioners with a private corporation, i.e., the Fleet Corporation, and in this instance in an action sounding in tort.

(7) In reversing the decision and holding of the District Court.

REASONS FOR GRANTING THE WRIT

(1) The Court of Appeals, in reversing the District Court and in dismissing the Complaint herein, predicated its decision entirely upon the premise that the Merchant Marine Act of 1936 provides a complete method of liquidation of the Fleet Corporation in substitution for the method provided by the Code of Laws of the District of Columbia; that the United States, by the enactment of the Merchant Marine Act of 1936, had assumed all of the obligations of the Fleet Corporation, presumably including that corporation's obligation to pay interest upon obligations of the character sued upon by petitioners in the District Court and presumably including the obligations of that corporation sounding in tort.

(2) Precisely the same reasoning as that employed by the Court of Appeals in reaching its decision and conclusion might be applied with equal force in determining that the jurisdiction of the United States District Courts was enlarged by the Merchant Marine Act of 1936 to include actions against the United States, as the assumer of the obligations of the Fleet Corporation, even though, in particular cases, the amount in controversy exceeded the sum of $10,000.[1]

(3) In order to protect whatever rights they may have, your petitioners intend to institute an action in the Court of Claims of the United States and there seek the recovery of the monies which they deposited with the Fleet Corporation and to also seek an award of interest upon such monies and an award of compensatory and punitive damages in an action sounding in tort. However, should the Court of Claims of the

[1] See Appendix B.

United States entertain a view different from that of the Court of Appeals of the District of Columbia and decide that the Merchant Marine Act of 1936 did not, as concluded by the Court of Appeals of the District of Columbia, have the effect of amending the Tucker Act,[1] the right of your petitioners to pursue their remedies against the Fleet Corporation or against the United States in any Court of the United States would have been lost.

(4) Unless the petition herein is granted your petitioners may be deprived of valuable property rights which are guaranteed to them under the Fifth Amendment to the Constitution of the United States, i.e., their right to sue the Fleet Corporation, as a private corporation, for their monies, for interest, and for damages in an action sounding in tort.

(5) An important question of Federal law is presented as the United States has undertaken, by legislative fiat, to dissolve a private corporation which was organized and which existed under the laws of the District of Columbia without affording adequate protection to petitioners and other creditors of such corporation.

(6) Your petitioners are informed, and therefore assert, that there are a large number of private corporations which have been created by, or availed or by, the Government of the United States, to deal, as private corporations, with citizens of the United States and others. It is, therefore, of transcendent importance that the Court issue the writ herein prayed for in order that those who have dealt, are dealing, or may deal with such corporations, may know the extent of their rights

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[1] Mar. 3, 1887, c. 359, Sec. 1, 24 Stat. 505; Mar. 3, 1911, c. 231, Sec. 145, 36 Stat. 1136. See Appendix C.

against such corporations, the forum or forums before which they may seek redress against such corporations and whether or not the Congress of the United States may undertake, by legislation such as Section 203(a) of the Merchant Marine Act of 1936, to dissolve such corporations, to repeal the laws of the political subdivisions under which they were created and transacted business, and to thus deprive creditors of valuable rights upon the faith of which they dealt with such corporations.

(7) The Court of Appeals of the District has held that Section 203(a) of the Merchant Marine Act of 1936 has had the effect

(a) of dissolving the United States Shipping Board Merchant Fleet Corporation for all purposes;

(b) of having made the Fleet Corporation immune to suit;

(c) of depriving *bona fide* creditors of the Fleet Corporation of their right to pursue the assets of such corporation in the manner provided for by the Code of Laws of the District of Columbia;

(d) of stripping the Fleet Corporation of all of its assets including property, in respect of which it has and had no right, title or interest, i.e., cash deposited in escrow or in trust by your petitioners with that corporation;

(e) of restricting the limits of the jurisdiction of the United States District Courts by sheer implication and for that matter of State Courts;

(f) of broadening the jurisdiction of the Court of Claims of the United States to include actions against the United States for interest in cases similar to this,

of which the Court of Claims and this Court has repeatedly held it is without jurisdiction;

(g) of holding that the Tucker Act is amended by Section 203(a) of the Merchant Marine Act of 1936, so that the jurisdiction of the Court of Claims has been broadened to include actions based upon claims for compensatory and punitive damages in claims or cases sounding in tort.

(8) The Court of Appeals of the District of Columbia cited no authorities in support of its conclusion and decision. Counsel for your petitioners know of no decisions, of this or any other Court, which lend support to the position adopted by the lower court.

(9) The decision of the Court of Appeals of the District of Columbia is in direct contravention of the rules of statutory construction which have repeatedly been recognized and affirmed by this Court in that, though the Merchant Marine Act of 1936 specifically repeals certain prior Federal laws and parts of such laws, it does not purport to repeal, modify or extend the Code of Laws of the District of Columbia, the Tucker Act, or Section 24 of the Judicial Code, which determines the jurisdiction of the United States District Courts. Moreover, Section 203(a) of the Merchant Marine Act of 1936 is silent in respect of the other Federal laws which the Court of Appeals of the District of Columbia has held to be repealed, modified or extended.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

STANLEY SUYDAM,
Attorney for Petitioner.

PREW SAVOY,
Of Counsel.

APPENDIX "A"

Sec. 203. United States Shipping Board Merchant Fleet Corporation dissolution and transfer of property; disposition of pending suits; ratification of payments to employees.

(a) The United States Shipping Board Merchant Fleet Corporation shall cease to exist and shall stand dissolved. All the records, books, papers and corporate property of said dissolved corporation shall be taken over by the Commission. All existing contractual obligations of the dissolved corporation shall be assumed by the United States. Any suit against the dissolved corporation pending in any court of the United States shall be defended by the Commission upon behalf of the United States, under the supervision of the Attorney General, and any judgment obtained against the dissolved corporation in any such pending

suit shall be reported to Congress in the manner provided in section 226, title 31, United States Code, for reporting judgments against the United States in the Court of Claims. (June 29, 1936, c. 858, Title II, Sec. 203, 49 Stat. 1987.).

APPENDIX "B"

Section 41. (*Judicial Code, section 24, amended.*) *Original jurisdiction.* The district courts shall have original jurisdiction as follows:

(20) *Suits against United States.* Twentieth. Concurrent with the Court of Claims, all claims not exceeding $10,000 founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity or admiralty if the United States were suable, * * * * * *. (Mar. 3, 1887, c. 359, Secs. 1, 2, 24 Stat. 505; June 27, 1898, c. 503, Sec. 1, 30 Stat. 494; July 1, 1898, c. 546, Sec. 3, 30 Stat. 649; Feb. 26, 1900, c. 25, 31 Stat. 33; Mar. 3, 1911, c. 231, Sec. 24, par. 20, 36 Stat. 1093; Nov. 23, 1921, c. 136, Sec. 1310 (c), 42 Stat. 311; June 2, 1924, 4.01 p.m., c. 234, Sec. 1025 (c), 43 Stat. 348; Feb. 24, 1925, c. 309, 43 Stat. 972.

APPENDIX "C"

Sec. 250. (*Judicial Code, section 145.*) *Jurisdiction.* The Court of Claims shall have jurisdiction to hear and determine the following matters:

(1) *Claims against United States.* First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which, prior to March 3, 1887, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same. (Mar. 3, 1887, c. 359, Sec. 1, 24 Stat. 505; Mar. 3, 1911, c. 231, Sec. 145, 36 Stat. 1136.)

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 89

FIRST NATIONAL STEAMSHIP COMPANY, ET AL., PETITIONERS

v.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, FORMERLY THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION IN OPPOSITION

OPINIONS BELOW

The District Court delivered no opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 22–28) is not yet officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on February 17, 1941 (R. 28). The petition for a

writ of certiorari was filed on May 16, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, after the effective date of Section 203 (a) of the Merchant Marine Act of 1936 (c. 858, 49 Stat. 1985, 1987, 46 U. S. C., Supp. V § 1113), an action may be instituted against the United States Shipping Board Merchant Fleet Corporation.

STATUTE INVOLVED

Section 203 (a) of the Merchant Marine Act of 1936 (c. 858, 49 Stat. 1985, 1987, 46 U. S. C., Supp. V § 1113) provides as follows:

> SEC. 203 (a) The United States Shipping Board Merchant Fleet Corporation shall cease to exist and shall stand dissolved. All the records, books, papers, and corporate property of said dissolved corporation shall be taken over by the Commission. All existing contractual obligations of the dissolved corporation shall be assumed by the United States. Any suit against the dissolved corporation pending in any court of the United States shall be defended by the Commission upon behalf of the United States, under the supervision of the Attorney General, and any judgment obtained against the dissolved corporation in any such pending suit shall be reported to Congress in the manner pro-

vided in section 226, title 31, United States Code, for reporting judgments against the United States in the Court of Claims.

STATEMENT

On October 6, 1938, petitioners commenced an action in the United States District Court for the District of Columbia against the United States Shipping Board, the United States Shipping Board Merchant Fleet Corporation, Daniel C. Roper, as Secretary of Commerce of the United States, and the United States Maritime Commission (R. 1–10).[1] By an order of April 3, 1939

[1] The complaint (R. 1–10) alleged that at some undisclosed time it was agreed between petitioners and the United States Shipping Board (hereinafter called the "Board") and the United States Shipping Board Merchant Fleet Corporation (hereinafter called the "Fleet Corporation") that petitioners would operate three vessels owned by the United States and would pay certain expenses in connection with such operation; that deposits of $538,048.23 would be made by petitioners with the Board and Fleet Corporation; that if the vessels were offered for sale and if petitioners were the successful bidders, the deposit would be applied to the purchase price, but if the vessels were not offered for sale or petitioners were not the successful bidders or if the Fleet Corporation withdrew the vessels from petitioners' custody, the deposits would be returned; that the Fleet Corporation would pay "all owners fixed charges" including insurance; and that the costs of certain improvements to the vessels would be borne "by the defendants" (R. 3–4). It was alleged further that the vessels were entrusted to petitioners in May, June, and September 1920 and that the deposits were made; that in November 1920 one of the vessels suffered heavy sea damage and that petitioners were "thus automatically deprived of commercial custody and control of said vessel"

(R. 11), the District Court dismissed the action as to all defendants except the Fleet Corporation. On April 5, 1939, a motion (R. 12) was filed by the Fleet Corporation to dismiss the action as to it upon the ground that the complaint failed to state a cause of action and upon the further ground that the court lacked jurisdiction over the Fleet Cor-

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(R. 6); that on December 23, 1920, the "United States Shipping Board or the Fleet Corporation" (R. 5) notified petitioners that unless certain contracts were signed, the vessels would be repossessed; and that on January 5, 1921, the Board or Fleet Corporation did repossess the vessels (R. 4–6). The complaint states further (R. 7) that, after the repossession, the petitioners made demand upon the Shipping Board and the Fleet Corporation for return of the deposit, $538,048.23, and for reimbursement of all sums of money expended by petitioners for the benefit of the Board and the Fleet Corporation, $96,208.03, or a total of $634,256.26; that the Shipping Board and Fleet Corporation refused to pay, remit or refund the money demanded, and that in the year 1925 suit was filed in the Court of Claims for the recovery of such sums. It was alleged further (R. 7–9) that thereafter, on October 7, 1935, because the issues "had become confused as the result of the actions" of certain Government officers and because of the "dire financial straits" of petitioners, petitioners were compelled to negotiate with the Attorney General and to accept $250,000 in settlement, whereupon the suit in the Court of Claims was dismissed, as were certain counterclaims filed by the United States. The action in the instant case is to recover the balance due ($384,256.26) with interest at 6% from January 5, 1921, until paid, together with interest at 6% on $250,000 from January 5, 1921, to October 7, 1935. Recovery was also sought of "an amount to be determined by this Court as compensation for the damages, losses, and injuries sustained by complainants by reason of the wilful and deliberate neglect and refusal" on the part of the defendants to refund the money (R. 10).

poration and the subject matter of the action. On January 18, 1940, the motion was overruled without opinion (R. 19). Upon appeal, this order was reversed and the cause was remanded to the District Court with instructions to dismiss the complaint (R. 28).

The court below held that, under Section 203 (a) of the Merchant Marine Act of 1935, *supra,* the charter of the Fleet Corporation was revoked and annulled, that the United States was substituted for the Fleet Corporation on the contractual obligations of the latter, and that therefore the exclusive forum for such suits as the present one was the Court of Claims. The court further held that Section 203 (a), so construed, was valid because the assumption by the United States of the contractual obligations of the Fleet Corporation afforded "a sufficient remedy, due process of law, and just compensation for any private property which has been taken for public use" (R. 27).[2]

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[2] There is now pending in the Court of Claims a suit by the same petitioners against the United States (Court of Claims Case No. 44103) in which the petition is substantially identical to that in the instant case. In addition, pursuant to Senate Resolution 327, 76th Cong., 3d Sess., testimony is now being taken before a Commissioner of the Court of Claims in order to report to the Senate "(1) whether there were any sales of or valid contracts to sell the subject vessels to said companies and whether the companies breached any contracts and thereby damaged the United States Shipping Board to the extent of $384,256.26 * * * and (2) whether the payment to said companies on October 7, 1935, was a payment of all the moneys due and owing said com-

ARGUMENT

It is settled that a dissolved corporation is not suable in the absence of some statutory authority for the prolongation of the corporation's life. *Chicago Title & Trust Co.* v. *Wilcox Building Corp.*, 302 U. S. 120, 125. The only questions in this case, therefore, are (1) whether Section 203 (a) of the Merchant Marine Act of 1936 was intended to dissolve the Fleet Corporation; and (2) if so, whether the Act is violative of the Fifth Amendment because it remits petitioners to suit under the Tucker Act, which confers no jurisdiction of actions sounding in tort and prohibits an award of interest on contract claims prior to the date of judgment, in the absence of an express provision for interest in the contract. Judicial Code, Sections 145, 177; 28 U. S. C. §§ 250, 284.[3]

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panies existing on December 31, 1925 * * *" (Congressional Case No. 17764).

[3] The Merchant Marine Act of 1936 does not waive the Tucker Act limitations upon the suability of the United States. Cf. *United States* v. *Shaw*, 309 U. S. 495, 505.

Petitioners assert (Pet. 5–6) that the decision below was predicated upon the premise that, under the Act, the United States assumed all the obligations of the Fleet Corporation, including an obligation to pay interest on claims of the character here sued upon as well as obligations of the Corporation sounding in tort, and contend that, since the Court of Claims may hold otherwise, petitioners may be deprived of their constitutional rights unless this petition is granted. Petitioners' statement as to the premise of the decision below is without foundation and the purpose in making such a representation is not apparent, unless it be to lay the basis for a like contention in the pending proceeding in the Court

1. Section 203 (a) of the Merchant Marine Act of 1936 effected a complete dissolution of the Fleet Corporation. The statute expressly provides that the Fleet Corporation "shall cease to exist and shall stand dissolved." As the court below observed, "it is hard to think of language more definite in meaning" (R. 26). Certainly, if it was intended that the Fleet Corporation be dissolved pursuant to the "ordinary procedure" (R. 26) of the District of Columbia Code, such intention would not have been left to inference.[4] Cf. e. g., Act of

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of Claims. The court below clearly held that, under the Merchant Marine Act of 1936, petitioners have only such remedies as are available against the United States under the Tucker Act for claims arising out of contractual obligations and the taking of private property for public use.

[4] The dissolution provisions of the District of Columbia Code (D. C. Code, Tit. 5, c. 13, secs. 391–408), are entirely incompatible with the special provisions of Section 203 (a). After dissolution of the Fleet Corporation and distribution of its property to the Maritime Commission pursuant to Section 203 (a), there could be no efficacy in a court decree of dissolution and appointment of a receiver as provided for in the District of Columbia Code, *supra*. Judicial process could not reach property which even before 1936 was property of the United States. *Emergency Fleet Corp.* v. *Western Union Telegraph Co.*, 275 U. S. 415, 424. Although assets, while under control of the "suable" Fleet Corporation, may have been subject to execution, they became, on their transfer to the non-suable Maritime Commission, immune from execution. *Federal Housing Authority* v. *Burr*, 309 U. S. 242, 250–251. A court decree would be ineffective to distribute property already distributed by statute, or to vest trustees with authority to wind up affairs that had already been wound up. Moreover, if the provisions of the District of Columbia Code were intended to apply, it would

February 12, 1931, c. 120, 46 Stat. 1088, 1091, 5 D. C. Code, sec. 303. The express provision with respect to the defense of "pending" suits against the "dissolved corporation" plainly manifests the intention of Congress not to prolong the Corporation's life for purposes of any other suits. Section 203 (a), if valid, thus precludes the institution of any action against the Fleet Corporation after the effective date of the Act. Cf. *Johnson* v. *Fleet Corporation,* 280 U. S. 320.

2. Section 203 (a), as thus construed, does not deprive petitioners of any rights under the Fifth Amendment. The United States has expressly assumed all contractual obligations of the Fleet Corporation, an assumption which, as the court below correctly concluded, includes any obligation for a taking under eminent domain. Cf. *Jacobs* v. *United States,* 290 U. S. 13, 16. It is true that no interest would be recoverable in an action in the Court of Claims for breach of contract in the absence of an express agreement to pay interest. But even in actions between private parties, interest relates "merely to an incidental item of damages" (*Klaxon Co.* v. *Stentor Elec. Mfg. Co., Inc.,* No. 741, October Term 1940, decided June 2, 1941) and the right to interest as an element of

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have been unnecessary to provide in Section 203 (a) for continuation of pending litigation, or, for that matter, for suits against the United States on the contractual obligations of the Fleet Corporation. See D. C. Code, Tit. 5, c. 13, §§ 406–408.

damages for breach of contract may be enlarged or withdrawn after the execution of the contract. Cf. *Klaxon Co.* v. *Stentor Elec. Mfg. Co., Inc., supra; Funkhouser* v. *Preston,* 290 U. S. 163, 167–168. It is also true that no damages would be recoverable in the Court of Claims in an action sounding in tort. But the allegations of fact in the complaint disclose no cause of action in tort; at most they assert a claim for alleged breach of contract (see Complaint, par. 20, R. 7). The conclusory language of the prayer for relief (R. 10) is obviously immaterial.

The validity of Section 203 (a) may also be rested on the power of Congress to grant or withdraw its consent to be sued. That consent to suit against the United States may be withdrawn is well settled. *De Groot* v. *United States,* 5 Wall. 419, 432; *Lynch* v. *United States,* 292 U. S. 571, 581–582; *Coleman* v. *United States,* 100 F. (2d) 903 (C. C. A. 6th); *Huff* v. *United States,* 22 F. Supp. 309 (E. D. Ky.). Since the extent of immunity, if any, of governmental corporations depends solely on the intent of Congress (*Keifer & Keifer* v. *Reconstruction Finance Corp.,* 306 U. S. 381, 389) there is no basis for the application of a different rule in the case of such corporations. That the Fleet Corporation was originally organized under the laws of the District of Columbia is immaterial. It was a governmental agency and was given corporate form merely for administra-

tive reasons. *Skinner & Eddy Corp.* v. *McCarl,* 275 U. S. 1, 7–8. The power of Congress to disregard the corporate form and extend to the Corporation the privileges and immunities of the United States cannot be doubted. Cf. *Emergency Fleet Corp.* v. *Western Union,* 275 U. S. 415.[5]

3. No question of importance is involved. No other action is pending against the Fleet Corporation which was instituted subsequent to the effective date of the Merchant Marine Act of 1936 and, so far as we are aware, no one other than petitioners has ever sought to maintain such an action.

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[5] It should be added that, although the Act was passed June 29, 1936, it was not to become effective until 30 days after a majority of the members of the Maritime Commission had taken the oath of office (49 Stat. 2017, 46 U. S. C. § 1246), which was on October 26, 1936. United States Maritime Commission Report to Congress for Period Ended October 25, 1937, p. 2. The Act is thus comparable to statutes restricting former statutes of limitations and is valid. *Koshkonong* v. *Burton,* 104 U. S. 668, 675; *Terry* v. *Anderson,* 95 U. S. 628, 632. See also *Sohn* v. *Waterson,* 17 Wall. 596; *Antoni* v. *Greenhow,* 107 U. S. 769, 774. Petitioners have not alleged that the time was unreasonably short, nor have they shown that they were unable to commence an action within that period.

CONCLUSION

The decision of the court below is correct. There is no conflict and no question of importance is presented. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

FRANCIS BIDDLE,
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